

STANDARD CONSERVATION EASEMENT DEED
DEPARTMENT OF ENVIRONMENTAL SERVICES
July 2001

***NOTE:** This Standard Conservation Easement Deed is intended to be used as a template. The Standard Conservation Easement Deed shall be adapted to particular circumstances and sections may be added or deleted depending on the specific project involved. Conservation easement language for water supply lands has been developed by the Society for the Protection of New Hampshire Forests and is available by contacting the DES Drinking Water Protection Program, Sarah Pillsbury*

[Name of Grantor(s)], of/with a principal place of business at [street name and number], Town/City of _____, County of _____, State of New Hampshire, (hereinafter referred to as the "Grantor," which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns), for consideration paid, with WARRANTY covenants, grant[s] in perpetuity to [Name of Grantee(s)], with a principal mailing address of [street name and number], Town/City of _____, County of _____, State of New Hampshire, [acting through its Conservation Commission pursuant to NH RSA 36-A:4,] (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns), the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon/being unimproved land situated on [street name] in the Town/City of _____, County of _____, State of New Hampshire, with said Property and Easement more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

1. CONSERVATION PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes:

[choose appropriate section(s) among the following or include new language specific to the Property:]

- A. The preservation of the land [and the water body of (name of water body) to which it provides access and on which it fronts] subject to the Easement granted hereby for outdoor recreation by and/or the education of the general public, through the auspices of the Grantee; and
- B. The protection of the natural habitat of _____; and
- C. To preserve and protect in perpetuity the natural vegetation, soils, hydrology, natural habitat and the scenic and aesthetic character of the Property so that the Property retains its natural qualities and functions; and
- D. To prevent any future development, construction, or use that will significantly impair or interfere with the conservation values of the Property while allowing the reserved rights of Grantor as allowed under Section 3; and
- E. These purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in the [date] Master Plan of the Town/City of _____, which states "

___" and with New Hampshire RSA 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."; and

F. The preservation of that historically important land area which is _____ and/or the historic structure which is _____; and

G. The preservation and conservation of wetlands vegetation, soils, hydrology and/or habitat as documented in the report dated _____ entitled "_____ " (the "Report"), which Report is on file at the office of the Town Clerk of Grantee and is incorporated herein in full. The Report shall be periodically updated at no greater than ____ year intervals, and each such update shall be kept on file at the office of the Town Clerk of Grantee; and

H. The management of the Property in accordance with a Management Plan (hereinafter the "Plan"), that will be implemented and periodically updated approximately every ten (10) years after consultation with a certified wetlands scientist or other professionals as may be appropriate, that encourages and facilitates improvements in wetland vegetation, soils, hydrology and habitats. The Plan will include:

i. The Property's current owner(s), including their then current mailing address and telephone number(s);

ii. The Easement reference (by _____ County Registry of Deeds Book and Page numbers);

iii. A history of the Property and its management, including forestry or agricultural activities engaged in since the last Plan;

iv. An inventory of natural resources, including, but not limited to: tree and plant species, quality, age class distributions, growth rates, wetland areas, vernal pools, wildlife habitats, and rare and endangered plant and animal communities;

v. A Property map, which shall delineate: the Property's boundaries, forest types, wetland areas, vernal pools, estimated locations of any threatened or endangered animal and plant species, unique geological, hydrological, historical, and/or cultural features, existing roads and other access to the Property, soil types, topography and aspect;

vi. A description of the proposed management objectives and practices for the following ten (10) year period;

vii. A schedule for the routine monitoring of the Property and identification of the party(s) responsible for monitoring.

All of these purposes [this purpose] are [is] consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

2. USE LIMITATIONS [Subject to the reserved rights specified in Section 3 below]

[Choose appropriate section(s) among the following or include new language specific to the Property:]

A. The Property shall be maintained in perpetuity in an undeveloped and natural condition without there being conducted thereon any industrial or commercial activities, except as described below, and provided that such uses shall not degrade the conservation purposes of this Easement. No use shall be made of the Property, and no activity shall be permitted thereon, which is inconsistent with the intent of this Easement, that being the perpetual protection and preservation of the Property, as more particularly described in Section 1 herein.

B. The Property shall not be subdivided and none of the individual tracts that together comprise the Property shall be conveyed separately from one another.

C. No structure or improvement, including, but not limited to, a dwelling, any portion of a septic system, tennis court, swimming pool, dock, aircraft landing strip, tower, commercial facility, conduit or utility line, billboard or other means of advertising display, driveway or road made of asphalt or other impervious surface, mobile home or other temporary or permanent structure or improvement, shall be constructed, placed, or introduced onto the Property. However, ancillary structures and improvements including, but not limited to, a road, dam, fence, bridge, culvert, barn, maple sugar house, or shed may be constructed, placed, or introduced onto the Property only as necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property [and provided that they are not detrimental to the (scenic, agricultural, historic, recreational, wildlife habitat protection) purposes of this Easement]. Any such ancillary structure or improvement shall be constructed in a manner least detrimental to the conservation purposes of this Easement.

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

i. Are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property specifically reserved by Grantor and as allowed under Section 3 of this Easement; and

ii. Do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species; and

iii. Do not impact wetland vegetation, soils, hydrology or habitat; and

iv. Are not detrimental to the purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, and local permits and approvals shall be secured and such notices as may be required under Section 8 of this Easement shall be delivered.

E. No outdoor signs shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such signs are not detrimental to the purposes of this Easement. [No sign shall

exceed ____ square feet in size and no sign shall be artificially illuminated.]

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

G. There shall be no dumping, injection, burning, or burial of refuse, trash, rubbish, debris, junk, waste, man-made materials or materials then known to be environmentally hazardous, including vehicle bodies or parts, or other similar substances.

3. RESERVED RIGHTS

- A. [The Grantor reserves the right to conduct forestry and forest management activities for non-commercial purposes on the Property, including but not limited to cutting, planting, and thinning. Such activities are subject to the requirements of Section 2.A., and may only be conducted consistently with the conservation purposes of this Easement for the Grantor's personal use and the improvement of the forest resources on the Property and not for the contemporaneous production of sale proceeds or use in barter transactions.]
- B. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of the aforesaid reserved rights.

4. NOTIFICATION OF TRANSFER, MAINTENANCE OR OTHER ACTIVITIES

- A. The Grantor agrees to notify the Grantee in writing 10 days before the transfer of title to the Property [or any division of ownership thereof permitted hereby].
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.
- C. Except as otherwise specifically stated in this Easement, Grantor shall notify Grantee in writing 30 days before exercising any right reserved herein. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit Grantee to evaluate the proposed activity with the purposes of this Easement.

5. BENEFITS, BURDENS, AND ACCESS

- A. The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have access to the Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

C. Members of the general public shall [shall not] have access to the Property for outdoor recreation and education activities.

6. LEGAL REMEDIES OF GRANTEE

A. When a breach of this Easement, or conduct by anyone inconsistent with this Easement, comes to the attention of the Grantee, it shall notify the Grantor in writing of such breach or conduct, delivered in hand or by certified mail, return receipt requested.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach or conduct, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach, or to terminate said conduct, and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken under this section.

C. If the Grantor fails to take such proper action under the preceding paragraph, the Grantee shall, as appropriate to the purposes of this Easement, undertake any actions that are reasonably necessary to cure such breach or to repair any damage in the Grantor's name or to terminate such conduct. The cost thereof, including, but not limited to, the Grantee's reasonable expenses, expert fees, court costs, and legal fees, shall be paid by the Grantor, provided that the Grantor is directly or primarily responsible for the breach.

D. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

E. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal remedies against any third party responsible for any actions detrimental to the conservation purposes of this Easement.

F. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair Grantee's rights or remedies or be construed as a waiver.

G. Grantee shall have the right to enforce this Easement by appropriate legal means and to obtain injunctive and other equitable relief against any violations, including without limitation, relief requiring restoration of the Property to its condition prior to the time of the violation, and shall be in addition to, and not limitation of, any other rights and remedies available to the Grantee.

H. Grantee, by its acceptance of this Easement, does not undertake any liability or obligation relating to the condition of the Property.

I. The then Commissioner of the New Hampshire Department of Environmental Services ("NHDES") shall have standing to seek mandamus or such other relief against Grantee and/or Grantor as may be necessary in the event Grantee and/or Grantor has not, in the Commissioner's opinion, taken steps necessary under this section to adequately preserve and protect the conservation purposes of this Easement.

7. COVENANTS TO "RUN WITH THE LAND"

A. The terms and conditions of this Easement shall run with the Property in perpetuity, and shall be enforceable against the Grantor or any other person or entity holding any interest in the Property.

B. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Easement. The Grantor agrees to execute any such instrument upon the Grantee's request.

C. The benefits of this Easement shall be in gross and the Grantee shall not assign them, except in the following instances and from time to time:

i. As a condition of any assignment, the Grantee requires that the conservation purposes of this Easement continue to be enforced, and

ii. The assignee, at the time of assignment, qualifies under Sections 501(c) (3) and 170(h) of the Internal Revenue Code of 1986 (as amended or replaced) and applicable regulations thereunder as an eligible donee to receive this Easement directly.

8. NOTICES

All notices, requests and other communications, required or permitted to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

9. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

10. CONDEMNATION

A. The Grantor and the Grantee agree that the donation of this Easement gives rise to a real property right, immediately vested in the Grantee with a fair-market value that is equal to the proportionate value that this Easement, determined at the time of the gift, bears to the value of the unrestricted Property at that time. Such proportionate value of the Grantee's property right shall remain constant. Grantor's conveyance of any portion of the Property "subject to" this Easement will not entitle the Grantee to share in any proceeds of sale.

B. Notwithstanding the foregoing, whenever all or part of the Property is taken in exercise of eminent domain by public authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages

recovered.

[Alternative subparagraph B - B. Notwithstanding the foregoing, if all or any part of the Property or any interest therein is taken by public authority under power of eminent domain and all or any part of the interests created by this Easement are thereby extinguished by act of public authority, then the owner(s) of the fee title shall be entitled to eighty percent (80%) of any award and the Grantee shall be entitled to twenty percent (20%) of such award, and such owner(s) and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action.]

C. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale, in lieu of condemnation, of the Property unencumbered by the restrictions hereunder) shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. The values of the Grantor's and Grantee's interest shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation.

D. The Grantee shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

11. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization, described in Section 5.A. above, accepts and records the additional easement.

12. SEPARATE PARCEL

The Grantor agrees that for the purpose of determining compliance with any present or future bylaw, order, ordinance, or regulation (within this section referred to as "legal requirements") of the Town/City of _____, the State of New Hampshire or any other governmental unit, the Property shall be deemed a separate parcel of land and shall not be taken into account in determining whether any land of the Grantor, other than the Property, complies with any said legal requirements. The Property shall not be taken into account to satisfy in whole or in part any of said legal requirements or any area, density, setback or other dimensional standard applicable to such land.

13. MERGER

The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Property by or to the Grantee or any successor or assign shall be deemed to eliminate the Easement, or any portion thereof, granted hereunder under the doctrine of "merger" or any other legal doctrine.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

This is a conveyance to the state, a state agency, a county, a city, a town and/or village district pursuant to NH RSA 78-B:2 and is exempt from the New Hampshire Real Estate Transfer Tax.

IN WITNESS WHEREOF, I (We) have hereunto set my (our) hand(s) this _____ day of _____, 20__.

Name of Grantor

Name of Grantor

The State of New Hampshire
County of

Personally appeared _____ and
_____ this _____ day of _____, 20__ and
acknowledged the foregoing to be his/her/their voluntary act and deed.

Before me,

Justice of the Peace/Notary Public

My commission expires:

ACCEPTED: [Name of Grantee]

By:

Title:

Duly Authorized

Date:

The State of New Hampshire
County of

Personally appeared

Title

of the [Name of Grantee] , this _____ day of _____, [month and year] and acknowledged
the foregoing on behalf of the [Name of Grantee]

.

Before me,

Justice of the Peace/Notary Public

My commission expires: